

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11	WILLIAM JOHN DAUGHTERY, CDCR	)	Case No. 08cv0408-WQH (BLM)
12	#F-79985,	)	
13	Plaintiff,	)	<b>ORDER DENYING REQUEST FOR</b>
14	v.	)	<b>APPOINTMENT OF COUNSEL</b>
15		)	<b>[Doc. No. 13]</b>
16	DENNIS WILSON, San Diego Police	)	
17	Officer; ESMERALDA TAGABAN, San	)	
18	Diego Police Officer; SERGEANT	)	
19	GRIFFIN; DETECTIVE LEMUS,	)	
20	Defendants.	)	
21	_____	)	

On April 21, 2008, Plaintiff, who is proceeding *pro se* and *in forma pauperis* with a Complaint brought pursuant to 42 U.S.C. § 1983, filed an *ex parte* motion<sup>1</sup> requesting assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Doc. No. 13 ("Pl.'s Mot."). Plaintiff requests appointment of counsel because he is disabled, indigent and incarcerated. *Id.* at 4. He claims his incarceration prevents him from accessing (1) "means to investigate or gather evidence including court documents and witnesses" and (2) documents involving police personnel,

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<sup>1</sup> The Court construes Plaintiff's Request for Appointment of Counsel as an *ex parte* motion.

1 which he contends are "protected by laws of anonymity and shielding."

2 Id.

3 "There is no constitutional right to appointed counsel in a § 1983  
4 action." Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing  
5 Storseth v. Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981)); see also  
6 Hedges v. Resolution Trust Corp. (In re Hedges), 32 F.3d 1360, 1363 (9th  
7 Cir. 1994) ("there is no absolute right to counsel in civil  
8 proceedings"). Thus, federal courts do not have the authority "to make  
9 coercive appointments of counsel." Mallard v. United States District  
10 Court, 490 U.S. 296, 310 (1989); see also United States v. \$292,888.04  
11 in U.S. Currency, 54 F.3d 564, 569 (9th Cir. 1995) ("Appointment of  
12 counsel under [28 U.S.C. § 1915] is discretionary, not mandatory").

13 District courts have discretion, however, pursuant to 28 U.S.C.  
14 § 1915(e)(1), to "request" that an attorney represent indigent civil  
15 litigants upon a showing of "exceptional circumstances." Agyeman v.  
16 Corrections Corp. of America, 390 F.3d 1101, 1103 (9th Cir. 2004). "A  
17 finding of the exceptional circumstances of the plaintiff seeking  
18 assistance requires at least an evaluation of the likelihood of the  
19 plaintiff's success on the merits and an evaluation of the plaintiff's  
20 ability to articulate his claims 'in light of the complexity of the  
21 legal issues involved.'" Id. (quoting Wilborn v. Escalderon, 789 F.2d  
22 1328, 1331 (9th Cir. 1986)).

23 Plaintiff first requests the appointment of counsel because he  
24 cannot afford to hire an attorney. Pl.'s Mot. at 4. While indigence is  
25 one prerequisite to any request for appointment of counsel under section  
26 1915(e)(1), Plaintiff must also plead facts which show he has an  
27 insufficient grasp of his case or the legal issue involved and an  
28 inadequate ability to articulate the factual basis of his claim.

1 Agyeman, 390 F.3d at 1103. Plaintiff has not made such a showing. In  
2 fact, the district judge already has determined that Plaintiff's *pro se*  
3 Complaint alleges excessive force claims sufficient to survive the  
4 initial screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and  
5 has directed the U.S. Marshal to effect service on Plaintiff's behalf.  
6 See Doc. No. 3. Moreover, Plaintiff's claims of excessive force against  
7 San Diego Police Officers are not particularly "complex" or unique.  
8 C.f. Agyeman, 390 F.3d at 1103.

9 Similarly, Plaintiff provides no explanation of how he is disabled  
10 or in what way his alleged disability impacts his ability to articulate  
11 his claims. Petitioner also provides no specific description of what  
12 documents he believes are necessary to prove his case or why his present  
13 state of incarceration would prevent his from serving written document  
14 requests or subpoenas on Defendants in accordance with the Federal Rules  
15 of Civil Procedure. Accordingly, the Court concludes that Plaintiff has  
16 failed to demonstrate that he cannot adequately articulate his claims or  
17 pursue his case without counsel. See Agyeman, 390 F.3d at 1103.

18 For the foregoing reasons, the Court find that Plaintiff has not  
19 alleged the requisite "exceptional circumstances" and hereby **DENIES**  
20 Plaintiff's Request for Appointment of Counsel [Doc. No. 13].

21 **IT IS SO ORDERED.**

22 DATED: April 23, 2008

23 

24 BARBARA L. MAJOR  
25 United States Magistrate Judge

26 COPY TO:

27 HONORABLE WILLIAM Q. HAYES  
28 U.S. DISTRICT JUDGE

ALL COUNSEL